

filed an answer and motion to dismiss on October 31, 1997 after which this case was heard by the PELRB on November 25, 1997.

FINDINGS OF FACT

1. The State of New Hampshire is a "public employer" within the meaning of RSA 273-A:1 X.
2. The State Employees Association of New Hampshire, S.E.I.U. Local 1984, is the duly certified bargaining agent for personnel, excluding State Police, employed by the State of New Hampshire, as is more specifically set forth in Article I, "Recognition" and "Preamble" to their collective bargaining agreement (CBA).
3. The Association and the State are parties to a collective bargaining agreement for the period July 1, 1997 through June 30, 1999. Article XI of that document is entitled "sick leave" and provides that it shall be accrued at the rate of 1 1/4 days per month, at the end of each completed month of service, for a total of 15 sick leave days per year. Article 11.2, entitled "Allowable Uses" says, "An employee may utilize his/her sick leave allowance for absences due to illness, injury, or exposure to contagious diseases endangering the health of other employees when requested by the attending physician, medical and dental appointments with prior approval, or death in the employee's immediate family and shall be deducted from his/her allowance on the basis of work days and not calendar days." Article 11.4, entitled "Certification," provides, "An employee may be required by the Employer to furnish the Employer with a certificate from the attending physician or other licensed health care practitioner when, for reasonable cause, the Employer believes that the employee's use of sick leave does not conform to the reasons and requirements for sick leave use set forth in this Agreement. Such certificate shall contain a statement that is the practitioner's professional judgment sick leave is necessary." There is also a provision whereby the State may, at its expense, have the employee examined by an independent physician if that employee, in the opinion of the employer, may not be entitled to sick leave.
4. Article 10.1 of the CBA addresses "Annual Leave"

and entitlement thereto. Rates of accrual vary by length of service and are incorporated herein by reference.

5. The Union complains that proposed revisions to the Administrative Rules of the Division of Personnel dated July 15, 1997, change the contents of former Rule PER 1001.07 in a way which violates the CBA and the parties' understandings during the course of and as the result of contract negotiations. It complains, in particular, about the proposed wording for new Rule PER 1007.17 (a) (3) (c) which would authorize the appointing authority "to demote an employee under any of the following circumstances: For offenses including, but not limited to... excessive unscheduled absences even if payment or approval for the leave is authorized..." The Union further complains that, during a meet and confer meeting with the State on or about July 10, 1997, there was reference to a Bureau of National Affairs report that use of more than seven (7) sick leave absences per year was a indicative of abuse. The Union says enforcement of this standard, versus the fifteen (15) days of authorized accrual per year, violates the CBA. There is also an issue of the appointing authority's ability to revoke approval for leave after it has been granted by the employee's supervisor.

6. Virginia Lamberton, Director of the Division of Personnel, testified for the State and said that her office was in the process of rule making prior to expiration of the Division's administrative rules. As part of that process, the Union and the State Troopers Association were invited to meet and consult, under RSA 21-I:43, on proposed rules in July of 1997. During that meeting, she identified an over 15 year old article which suggested that usage of more than 7 sick days per year may be a sign of abuse but said that the Union was mistaken about her enforcing that as a standard because there is "no point to disciplining [an employee] if you are not going to prevail." She added that 9 out of 10 absenteeism abuse cases are settled as the result of employee counseling, short of formal discipline. The State has taken the position that a signed and approved sick leave form does not preclude disciplinary action if dishonesty or abuse is discovered thereafter. She acknowledged that the parties have negotiated the rate of sick

leave accrual as found in the CBA but said that issues relating to its usage, under circumstances described as being appropriate in the CBA, are covered by the administrative rules of the Division of Personnel, commonly referred to as the "Personnel Rules."

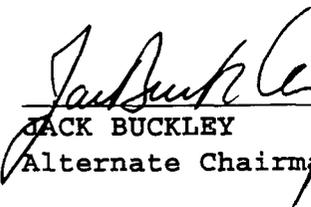
DECISION AND ORDER

The Union has failed to demonstrate that the State has violated RSA 273-A:5 I, as alleged. First, the proposed rules are still in the discussion stage and have not been adopted. Second, because they have not been adopted, it cannot be said that they have been used or interpreted by the State in such a way as to violate the CBA or the various protections of RSA 273-A. Third, when and if changes in the Personnel Rules are formally adopted and when and if their implementation deprives an employee(s) of rights under the CBA or under RSA 273-A, then the matter will be ripe for processing, either as a grievance or ULP, as the case may be.

Article 11.1 of the CBA provides, in pertinent part, that "sick leave is not intended to supplement other leave provisions of this Agreement and is intended to be used only for the purpose set forth" in the contract. Thus, if sick leave is unreasonably denied or inappropriately results in the imposition of discipline, the acts complained of may be processed under the grievance procedure (Article XIV) of the contract since that process is intended to adjust "grievances and disputes arising with respect to the interpretation or application of any provision of this Agreement." In the meantime, the ULP is DISMISSED.

So ordered.

Signed this 10th day of December, 1997.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members William Kidder and E. Vincent Hall present and voting.